SIKKIM

GOVERNMENT GAZETTE

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SIKKIM LEGISLATIVE ASSEMBLY SECRETARIAT
GANGTOK

No.SLA/101/SLAS/L&PA/2006-07 **Dated : 7th June 2006**

NOTIFICATION

In pursuance of rule 75 of the Rules of Procedure and Conduct of Business in the Sikkim Legislative Assembly, the Speaker has been pleased to order the pre-publication of the following Bill.-

THE SIKKIM PUBLIC DEMANDS RECOVERY BILL, 2006

(BILL NO.14 OF 2006)

A

BILL

to make provisions for the recovery of public demands in Sikkim.

Be it enacted by the Legislature of Sikkim in the Fifty-seventh Year of the Republic of India as follows:-

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Sikkim Public Demands Recovery Act, 2006.
(2) It extends to the whole of Sikkim.
(3) It shall come into force at once.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context –
(a) "Certificate-debtor" means the person named as debtor in a Certificate filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;
(b) "Certificate-holder" means the State Government or Corporation or Company ownedor controlled by the State Government or any State Government Officer, Officer of the Corporation or any local authority in whose favour a Certificate has been filed under this Act and includes any person whose name is substituted or added as creditor by the Certificate Officer;
(c) "Certificate Officer" means the Collector of the District and includes any other officer appointed by the State Government by notification, to perform the functions of a Certificate Officer under this Act;
(d) "Moveable property" includes growing crops;
(e) "Notification" means a notification published in the Official Gazette;

(f) "Public Demand" means any money payable to or any liability (inclusive of interest) which is claimed as due from any person by the State Government or a Department or any Corporation or Company or the State Bank of Sikkim or any Local Authority, under any law for the time being in force or under a written agreement with the above authorities or institution or instrument or any Decree or Award of any Court or Authority competent to adjudicate the claims.

(g) "The State Bank of Sikkim" means the State Bank of Sikkim incorporated under the State Bank of Sikkim Proclamation, 1968.

Power of Certificate Officer.

3. (1) Every Certificate Officer shall be deemed to be a Civil Court for the purpose of sections 480,481,482 and 483 of the Code of Criminal Procedure, 1898.

5 of 1989

(2) Every Certificate Officer may for the purpose of enquiry into any dispute relating to the issue of certificate for money shall have same powers as conferred on the Civil Court under the Code of Civil Procedure, 1908 in respect of:

5 of 1908

(a) enforcing attendance of any person and examining him on oath;

(b) compiling and production of documents and material objects; and

(c) issuing commissions for purpose of examination of witness and every inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code, 1860.

45 of 1860

Filing of Certificate for public demand.

4. (1) When the Certificate Officer is satisfied on an application made to him or otherwise that any public demand is due, he may sign a Certificate in such form as may be prescribed, stating that the demand is due, and shall cause the Certificate to be filed in his office.

(2) Before signing the Certificate, a notice shall be issued to the person or persons from whom any money is due and if necessary hold an enquiry as it deems necessary;

(3) The certificate issued under this section shall be final and binding on the parties.

(4) All proceeding under this section shall be completed within three months from the date of issue of notice to the opposite party.

Service of Notice and copy of certificate on Certificate debtor.

5. When a Certificate has been filed in the office of Certificate Officer under section 4,he shall cause to be served upon the Certificate-debtor, a notice in the prescribed form and a copy of the Certificate stating that the demand is due and shall be paid forthwith.

Effect of Service of Notice of Certificate.

6. On and from the date of service of notice under section 5 upon a Certificate debtor,

(a) any private transfer or delivery of any of his immovable property by Certificate-debtor within the State of Sikkim shall be void against any claim enforceable in execution of the certificate, and

(b) the amount due from time to time in respect of the Certificate shall be a charge upon the immovable property of the Certificate – debtor, in preference to all other charge of liabilities created on that property.

Who may execute Certificate.

7. A Certificate filed under section 4 may be executed by .-

(a) the Certificate Officer in whose office the original Certificate is filed, or

(b) the Certificate Officer to whom a copy of the certificate is sent for execution under sub-section (1) of section 8.

Transmission of Certificate to another Certificate Officer for execution.

8. (1) A Certificate Officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate Officer.

(2) When a copy of Certificate is sent to any such Officer, he shall cause it to be filed in his office and thereupon the provision of section 6 with respect to Certificate filed in the office of a Certificate Officer shall apply as if such copy were an original Certificate:

Provided that it shall not be necessary to serve a second notice and copy under section 5.

Power of attachment.

9. If the Certificate Officer, in whose office a certificate is filed, is satisfied that the Certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such his movable property and that the realization of the amount of the Certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, attachment of the whole or any part of such moveable property:

Provided that if the Certificate – debtor whose moveable property has been so attached, furnishes, security to the satisfaction of the Certificate Officer, such attachment shall be cancelled from the date on which such security is accepted by the Certificate Officer.

Mode of execution.

10. Subject to such conditions and limitations as may be prescribed,the Certificate Officer may order execution of a Certificate –

(a) by attachment and sale, if necessary, of any property or, in the case of immovable property, by sale without previous attachment, or

(b) by attachment of any decree.

Interest, cost and charges recoverable.

11. There shall be recoverable in the proceedings in execution of every Certificate filed under this Act –

a) Interest upon, the public demand to which the Certificate relates, at the rate of twelve and a half per centum per annum from the date of signing of the Certificate upon the date of realization,

(b) such costs as are directed to be paid by the Certificate Officer in his discretion as having been incurred for the service of notice under section 5, and of warrants and other processes and all other proceedings taken for realizing the demand.

Property liable to attachment and sale in execution of a Certificate.

12. (1) All property both moveable and immovable, belonging to Certificate debtor, is liable to attachment and sale in execution of the Certificate.

(2) The Certificate Officer may attach the property by passing an order, and serving upon the Certificate debtor or any adult member of his family or by affixing, the order on the front door of his house or place of residence.

(3) The movable property indicated in the order shall be taken into custody of the Officer – in – Charge of the nearest Police Station or Out Post under the orders of the Certificate Officer.

(4) (a) In the case of immovable property, the Certificate Officer shall publish the date and time of sale with the upset price fixed in the Official Gazette and on the date so fixed shall sell the immovable property by public auction.

(b) In the case of movable property, no such publication is required. The movable property may be sold by public auction.

Attachment of Decree.

13. (1) The attachment of a decree of a Civil Court or the payment of money or for sal enforcement of a mortgage or charge shall be made by the issue to the Civil Court to stay the execution of the decree unless and until –

(a) the Certificate Officer cancels the notice, or

(b) the Certificate holder or the certificate debtor applies to the Court receiving such notice to execute the decree.

(2) When a Civil Court receives an application under clause (b) of sub-section (I), it shall on an application of the Certificate – holder or the Certificate – debtor, and subject to the provisions relating to execution of decree under the law relating to Civil Procedure proceed to execute the attached decree and apply the net proceeds in satisfaction of the Certificate.

(3) The Certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Purchaser's title, certificate of sale and delivery of possession.

14. (1) Where property is sold in execution of a Certificate, it shall vest in the purchaser with all the rights, title and interest of the Certificate-debtor at the time of sale.

(2) Where immovable property is sold in execution of a Certificate and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have been vested in him from the time when the property is sold, and not from the time, when the sale becomes absolute.

(3) Where a sale of immovable property has become absolute, the Certificate Officer shall grant a certificate specifying the property sold and the name of the persons who at the time of sale declared to be the purchaser. Such Certificate shall bear date of the day on which the sale becomes absolute.

(4) On the grant of Certificate under sub-section (3), and on the application of the purchaser, the Certificate Officer shall order, delivery to be made by putting such purchaser or any person whom the purchaser may appoint to receive delivery on his behalf, in possession of the property and, if needed by removing any persons who refuses to vacate the same.

Setting aside sale.

15. When immovable property has been sold in execution of a Certificate, the Certificate- debtor or any person whose interest are affected by the sale may, within thirty days from the date of the sale, apply to the Certificate Officer to set aside the sale on his depositing -

(a) for payment to the Certificate-holder the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of twelve and a half per centum per annum calculated from the date of the proclamation of sale to the date when the deposit is made;

(b) for payment to the purchaser, as penalty, a sum equal to five per centum of the purchase money, but not less than one rupee.

Person under disability.

16. When the Certificate Officer is satisfied that the certificate debtor is a minor or of unsound mind, he shall, in any proceeding under this Act permit him to be represented by any suitable person.

Procedure on death of certificate -debtor.

17. When the Certificate – debtor dies before the Certificate has been fully satisfied, the deceased, proceed to execute the Certificate against such legal representatives and the provisions of this Act shall apply as if such notice was a notice under section 4. The legal representative shall be liable only to the extent of the property of the deceased which has come to his hands.

Protection to Officer.

18. No suit or other legal proceeding shall lie against a Certificate Officer for any act done or purported to have been done by him under the provisions of this Act.

Power to make rules.

19. The State Government may make rules for the purpose of carrying out and giving effect to all or any of the provisions of this Act.

Repeal and Saving.

20. (1)The Sikkim Public Demand Recovery Act, 1988 is hereby repealed.

(2)Notwithstanding such repeal, anything done or any action taken in exercise of the powers conferred by or under the provisions of that Act shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such thing was done or such action was taken.

Pending proceedings.

21. All proceedings pending under the existing law for recovery of public demand shall be deemed to have been the proceedings under this Act and the Certificate Officer shall continue the proceedings as though they were initiated under this Act.

By Order.

SECRETARY
SIKKIM LEGISLATIVE ASSEMBLY